

7-6-06

AF
JFW



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Appellant: John L. Tetenes § Series Code/Serial No.: 10/027,358
Invention: DEVICE FOR HOLDING § Filed: December 26, 2001
A BUCKET OF FRESH CHUM § Group Art Unit: 3643
Agent's Docket No.: TETJ13A § Examiner: David J. Parsley
Doc. Loc. NWP51\AMEN001C\TETJ13AM.WPD § Paper No.: 13

As article No.: EL586865124US EXPRESS MAIL I hereby certify, that on the below indicated date, this correspondence is being deposited with the United States Postal Service with sufficient postage in an envelope addressed to the: Commissioner for Patents, P.O. BOX 1450, ALEXANDRIA VA 22313-1450.

MS AF (PATS)
Commissioner for Patents
P.O. BOX 145
ALEXANDRIA, VA 22313-1450

BY: Richard L. Miller
Agent for Appellant

Date: JULY 5, 2006

John L. Tetenes' Renewed Brief on Appeal

Sir:

In response to the Notification of Non-compliance with the Requirements of 37 CFR § 41.37(c) mailed from the Patent Office on June 8, 2006, Tetenes files the instant Renewed Brief on Appeal in triplicate appealing from the Final rejection of pending claims 1 and 4.

RICHARD L. MILLER
12 Parkside Drive
Dix Hills, NY 11746-4879

RESPECTFULLY SUBMITTED

Richard L. Miller
Richard L. Miller, Reg. # 26,309
Agent for Appellant

*COPY #1
ORIGINAL*

37 CFR § 43.37(c)(1)(i) - Real party in interest.

The real party in interest is John L. Tetenes as identified in the caption of the instant renewed brief on appeal.

37 CFR § 43.37(c)(1)(ii) - Related appeals and interferences.

There are no appeals, interferences or judicial proceedings known to appellant, applicant's legal representative or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

37 CFR § 43.37(c)(1)(iii) - Status of claims.

Claims 1 and 4 now pending in the application have been finally rejected and are on appeal. Claims 2, 3, and 5-9 have been canceled and claims 10 and 11 have been withdrawn.

37 CFR § 43.37(c)(1)(iv) - Status of amendments.

No amendment has been filed subsequent to the Final rejection.

37 CFR § 43.37(c)(1)(v) - Summary of claimed subject matter.

Claim 1 - the only independent claim on file.

A device (10) for holding a bucket (12) of chum (14) submerged in water (16) [Page 7, lines 4-5; and FIG. 2], comprising:

- a) a cylindrical containing component (18) [Page 7, line 5; and FIG. 2] having a lower edge (22) and an upper edge (26) [FIG. 7];

- b) a circular bottom component (20) being permanently attached to said lower edge (22) of said cylindrical containing component (18) [Page 7, lines 6-7; and **FIG. 7**];
- c) a toroidal sleeve (24) being fixedly located near said upper edge (26) of said cylindrical containing component (18) [Page 7, lines 7-8; and **FIG. 7**];
- d) a drawstring (28) cooperating with said upper edge (26) of said cylindrical containing component (18) and pulling said upper edge (26) closed for captivating the bucket (12) of chum (14) held within said device (10) [Page 7, lines 9-11; and **FIG. 7**]; and
- e) a welting (54) [Page 8, line 11] having edges (60) [Page 8, line 12; and **FIG. 8**];

wherein said cylindrical containing component (18) is fabricated out of sheet material (18a) [Page 7, lines 12-13; and **FIG. 3**];

wherein said sheet material (18a) is rectangular and has an upper edge (26a), a lower edge (22a), and two side edges (32) [Page 7, lines 13-15; and **FIG. 3**];

wherein said upper edge (26a) of said sheet material (18a) is said upper edge (26) of said cylindrical containing component (18) [Page 7, lines 15-17; and **FIG. 3**];

wherein said lower edge (22a) of said sheet material (18a) is said lower edge (22) of said cylindrical containing component (18) [Page 7, lines 17-19; and **FIG. 3**];

wherein said sheet material (18a) has two side edges (32) that are stitched together [Page 7, lines 21-22; and FIG. 3];

wherein said sheet material (18) has a first plurality of orifices (36) therein for permitting chum matter (14) to passthrough [Page 7, lines 22-24; FIGS. 1, 3, and 7];

wherein said sheet material (18a) has a second plurality of orifices (38) inline therein for cooperating with said drawstring (28) that is threaded therethrough [Page 7, lines 24-26; and FIG. 3];

wherein said sheet material (18a) has a longitudinal area (40) extending between said first plurality of orifices (36) and said second plurality of orifices (38), fabricates said toroidal sleeve (24) [Page 7, lines 26-29; and FIGS. 2, 3, and 7], and has a first longitudinal edge (42a) and a second longitudinal edge (44a) [FIG. 7];

wherein said toroidal sleeve (24) is fabricated by attaching said first longitudinal edge (42a) of said longitudinal area (40) and said second longitudinal edge (44a) of said longitudinal area (40) together [Page 7, line 30 to page 8, line 2; and FIG. 3];

wherein said sheet material (18a) is flexible plastic material [Page 8, lines 16-19];

wherein said circular bottom component (20) is fabricated out of sheet material having at least one orifice (36) therein for permitting the chum matter (14) to pass through [Page 8, lines 4-6; and FIG 6];

wherein said circular bottom component (20) has a circumference (50) and is permanently attached by stitching (48) near said circumference (50) thereof and near

said lower edge (22) of said cylindrical containing component (18) [Page 8, lines 6-9; and **FIG. 6**];

wherein said edges (60) of said welting (54) are sewn in between said circumference (50) of said circular bottom component (20) and said lower edge (22) of said cylindrical containing component (18) [Page 8, lines 12-15; and **FIG. 8**]; and wherein said sheet material is flexible plastic material [Page 8, lines 16-19].

Claim 4 - the only dependent claim on file.

The device (10) as defined in claim 1, wherein said toroidal sleeve (24) has foam floatation element (46) housed therein [Page 8, lines 2-3; and **FIGS. 2, 4, and 7**].

37 CFR § 43.37(c)(1)(vi) - Grounds of rejection to be reviewed on appeal.

Whether claims 1 and 4 are unpatentable under 35 U.S.C. § 103(a) over Tetenes in view of Nelson *et al.* Levey in view of Campbell in view of Juergens in view of Roberts and Willinger.

37 CFR § 43.37(c)(1)(vii) - Argument.

Whether claims 1 and 4 are unpatentable under 35 U.S.C. § 103(a) over Tetenes in view of Nelson *et al.* Levey in view of Campbell in view of Juergens in view of Roberts and Willinger.

Tetenes respectfully draws the Board's attention to the fact that the Federal Circuit holds that relevant case law must be relied upon in determining obviousness — the determination of obviousness is a matter of law.¹

In the seminal case of *Graham v. John Deere Co.*², the Supreme Court articulated the requirements for a *prima facie* holding of obviousness. The Patent Office has since set forth in the *MPEP*³ a three step requirement for establishing a *prima facie* case of obviousness.

The first step requires that the Examiner must set forth the differences in the claim over the applied references. The second step requires that the Examiner must set forth the proposed modification of the reference which would be necessary to arrive at the claimed subject matter. And, the third step requires that the Examiner must explain why the proposed modification would be obvious.

¹ *In re Deuel*, 51 F.3d 1552, 1557, 34 USPQ2d (BNA) 1210, 1214 (Fed. Cir. 1995) ("Obviousness is a question of law, which we review de novo, though factual findings underlying the Board's obviousness determination are reviewed for clear error. *In re Vaeck*, 947 F.2d 488, 493, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991); *In re Woodruff*, 919 F.2d 1575, 1577, 16 USPQ2d 1934, 1935 (Fed. Cir. 1990)."); *Richardson-Vicks Inc. v. The Upjohn Co.*, 122 F.3d 1476, 44 USPQ2d 1181 (Fed. Cir. 1997) ("The difficulty with RVI's position is that, although the argument has merit when the issue is purely one of fact, it does not follow when the issue involves a question of law. It is black letter law that the ultimate question of obviousness is a question of law. See *Graham v. Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966) (citing *Great A. & P. Tea Co. v. Supermarket Equip. Co.*, 340 U.S. 147, 155, 87 USPQ 303, 309 (1950)); *In re Donaldson Co.*, 16 F.3d 1189, 1192, 29 USPQ2d 1845, 1848 (Fed. Cir. 1994) (en banc); *Texas Instruments Inc. v. Unit States Int'l Trade Comm'n*, 988 F.2d 1165, 1178, 26 USPQ2d 1018, 1028 (Fed. Cir. 1993). And we review that legal question without deference to the trial court. See *Gardner V. TEC Sys. Inc.*, 725 F.2d 1338, 1344, 220 USPQ 777, 782 (Fed. Cir. 1984) (district court's conclusion on obviousness "is one of law and subject to full and independent review in this court")."

² 383 U.S. 1, 17, 148 USPQ 459, 467, 15 L.Ed. 2d 545, 86 S. Ct. 684 (1966).

³ at § 706.02.

The Federal Circuit requires that in order to satisfy the third step for establishing a *prima facie* case of obviousness, the Examiner must identify where the prior art provides a motivating suggestion to make the modifications proposed in the second step for establishing a *prima facie* case of obviousness.⁴

⁴ *In re Jones*, 958 F.2d 347, 21 USPQ.2d 1941 (Fed. Cir. 1992) (“Contention that one skilled in the herbicidal art would have been motivated to use, with acid commonly known as “dicamba,” substituted ammonium salt such as that disclosed in two prior references does not warrant holding that claimed substituted ammonium salt of dicamba for use as herbicide is *prima facie* obvious, since there is no suggestion for combining disclosures of those references either in references themselves, which are directed to shampoo additives and production of morpholine, respectively, or in knowledge generally available to those skilled in the art. * * * The Solicitor points out that, given the breadth of forms of dicamba (free acid, ester, or salt) disclosed by Richter as having herbicidal utility, one of ordinary skill in the art would appreciate that the dicamba group has significance with respect to imparting herbicidal activity to dicamba compounds. Thus, the solicitor contends, one skilled in the art would have been motivated to uses, with dicamba, substituted ammonium salts made from a known amine, such as the amine disclosed by Zorayan and Wideman, and would have expected such a salt to have herbicidal activity. Before the PTO may combine the disclosures of two or more prior art references in order to establish *prima facie* obviousness, there must be some suggestion for doing so, found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ.2d 1596, 1598-99 (Fed. Cir. 1988). We see no such suggestion in Zorayan, which is directed to shampoo additives, nor Wideman, which teaches that the amine used to make the claimed compound is a byproduct of the production of morpholine. Nor does the board disclosure of Richter fill the gap, for the reasons discussed above.”); *Arkie Lures, Inc. v. Gene Larew Tackle, Inc.*, 912 F.Supp. 422, 38 USPQ.2d 1300 (W.D.Ark. 1996) (“The existence of separate elements of the invention in the prior art is insufficient to establish obviousness, absent some teaching or suggestion in the prior art to combine the elements.”); *Gambro Lundia AB v. Baxter Healthcare Corporation*, 110 F.3d 1573, 42 USPQ.2d 1378 (Fed. Cir. 1997) (“Without a suggestion or teaching to combine, a case of obviousness is deficient.”). See *Heidelberger Druckmaschinen AG v. Hantscho Commercial Products, Inc.*, 21 F.3d 1068, 30 USPQ.2d 1377; *In re Fine*, 837 F.2d 1071, 5 USPQ.2d 1596 (Fed. Cir. 1988); *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The Federal Circuit further requires, however, that even if the prior art may be modified as suggested by the Examiner, the modification is not made obvious unless the prior art suggests the desirability of the modification.⁵

Neither Tetenes, Nelson *et al.*, Levey, Campbell, Juergens, Roberts, Willinger, nor for that matter any of the other references cited by the Examiner, make any motivating suggestion that:

- The device for holding a bucket of chum as taught by Tetenes can be modified to have added thereto the drawstring to close the upper edge of the container as taught by Nelson *et al.*, as suggested by the Examiner at page 3, ¶ 1, lines 6-8 of the Final Rejection;
- The device for holding a bucket of chum as taught by Tetenes and modified by Nelson *et al.* can be further modified to have added thereto the sheet material having a plurality of orifices for permitting chum matter to pas through as taught by Levey, as suggested by the Examiner at page 4, ¶ 1, lines 4-6 of the Final Rejection;
- The device for holding a bucket of chum as taught by Tetenes and modified by Nelson *et al.* can be further modified to have added thereto the sheet material having a second plurality of orifices to thread the drawstring as taught by Campbell, as suggested by the Examiner at page 4, ¶ 2, lines 5-7 of the Final Rejection;
- The device for holding a bucket of chum as taught by Tetenes and modified by Nelson *et al.* can be further modified to have added thereto the sheet material having a longitudinal area for fabricating the toroidal sleeve as taught by Juergens, as suggested by the Examiner at page 5, ¶ 1, lines 1-4 of the Final Rejection;

⁵ *In re Fritch*, 922, F.2d 1260, 23 USPQ.2d 1780, 1783 (Fed. Cir. 1992) (“The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. *In re Gordon*, 733 F.2d at 902, 221 USPQ at 1127.”).

- The device for holding a bucket of chum as taught by Tetenes and modified by Nelson *et al.*, Levey, Campbell, and Juergens can be further modified to have added thereto the toroidal sleeve being fabricated by stitching a first and second longitudinal edges of the longitudinal area together as taught by Roberts, as suggested by the Examiner at page 5, ¶ 2, lines 6-9 of the Final Rejection;
- The device for holding a bucket of chum as taught by Tetenes and modified by Nelson *et al.*, Levey, Campbell, Juergens, and Roberts can be further modified to have added thereto the sheet material being made of a flexible material as taught by Nelson *et al.* and Roberts, as suggested by the Examiner at page 5, ¶ 3, lines 3-6 of the Final Rejection;
- The device for holding a bucket of chum as taught by Tetenes and modified by Nelson *et al.* can be further modified to have added thereto the orifice in the bottom of the container permitting chum matter to pass through as taught by Willinger, as suggested by the Examiner at page 6, ¶ 2, lines 5-8 of the Final Rejection;
- The device for holding a bucket of chum as taught by Tetenes and modified by Nelson *et al.* and Willinger can be further modified to have added thereto the circular bottom component permanently attached to the container as taught by Roberts, as suggested by the Examiner at page 6, ¶ 3, lines 6-9 of the Final Rejection;
- The device for holding a bucket of chum as taught by Tetenes and modified by Nelson *et al.*, Willinger, and Roberts can be further modified to have added thereto the welting sewn between the bottom portion and the lower edge of the cylindrical container as taught by Campbell, as suggested by the Examiner at page 7, ¶ 1, lines 5-8 of the Final Rejection; and
- The device for holding a bucket of chum as taught by Tetenes and modified by Nelson *et al.*, Willinger, Roberts, and Campbell can be further modified to have added thereto the sheet material made from plastic as taught by Nelson *et al.* and Roberts, as suggested by the Examiner at page 7, ¶ 2, lines 3-6 of the Final Rejection.

It appears that the Examiner has merely combined elements in a piecemeal manner in light of Tetenes' disclosure to show obviousness by using Tetenes' own specification as though it were prior art and in doing appears to have violated the basic mandate inherent in 35 U.S.C. § 103.⁶

Tetenes can cite, for example, two examples of the Examiner combining elements in a piecemeal manner in light of Tetenes' disclosure to show obviousness by using Tetenes' own specification as though it were prior art for motivation.

First, at page 3, ¶ 1, line 8 of the Final rejection, where it is disclosed:

“[T]o completely enclose the
inside of the container * * *.”

Tetenes has exhausted the use of this — in not so many words — throughout his application, for example, at page 7, line 11, where it is disclosed:

“[C]aptivating the bucket **12** of
chum **14** held within the device
10.”

⁶ *In re Kamm and Young*, 17 USPQ 298 (“The rejection here runs afoul of a basic mandate inherent in section 103 - that a piecemeal reconstruction of the prior art patents in the light of appellants' disclosure shall not be the basis for a holding of obviousness.”); *In re Stephens, Wenzl, and Browne*, 145 USPQ 656, 657 (CCPA 1965) (“References may not be combined indiscriminately and with guidance from applicant's disclosure to show that the claims are unpatentable. * * * In our consideration of the record in light of appellants' arguments, we find nothing which demonstrates that the examiner and the board erred in rejecting the claims. While we agree with appellants that references may not be combined indiscriminately and with guidance from appellants' disclosure to show that claims are unpatentable, we think the combination of references here is proper and adequately suggests the structure appellants have achieved.”); *Panduit Corp. v. Burndy Corporation et al.*, 180 USPQ 498, 505 (District Court, N.D. Illinois, E. Div.) (“[C]ombination * * * cannot be anticipated piecemeal by showing that the various elements of the invention are individually old.”); *In re Antle*, 444 F.2d 1168, 1171-72, 170 USPQ 285, 287-88 (CCPA 1971) (where the Court held warned against selection of prior art with hindsight.).

And, second at page 4, ¶ 1, lines 7-8 of the Final rejection, where it is disclosed:

[T]he chum can pass through
the container walls and into the
water to attract fish.”

Tetenes has exhausted the use of this — in not so many words — throughout his application, for example, at page 7, ¶ line 24, where it is disclosed:

“[F]or permitting chum matter
to pass through * * *.”

Furthermore, it is apparent that the Examiner has taken facts beyond the record by stating at page 3, ¶ 2, lines 3-4 of the Final rejection a statement that is contrary to the PTO policy in the *MPEP*⁷ directing Examiners never to overlook the importance of allowing claims that properly define patentable subject matter:

“It is inherent that the
cylindrical containers are made
of sheet material since the
thickness of the walls of the
container are so thin.”
[Emphasis added]

It is improper, if not inequitable, for the Examiner to rely on this fact for evidence of the rejection.⁸

⁷ at § 706.02(a).

⁸ *In re Howard*, 394 F.2d 869, 872 (CCPA 1968) (“I do not see how, without any evidence, we can use the doctrine of judicial notice to find that a system exists which anticipates that of the application or is nearly like it as to make the application an obvious variation * * *. Without some concrete evidence (of which there is none) I do not think that it is possible to find that the system of this application is old or that it is obvious under Section 103.”); *In re Ahlert*, 165 USPQ 418, 420 (CCPA 1970) (“Facts beyond the record should not be evidence upon which a rejection is based.”).

Furthermore, the Examiner is not obligated to find such a rejection simply to be able to reject every claim in the application. Just because “the walls of the container are supposedly so thin” does not prove that “the cylindrical containing component is fabricated out of sheet material.” Many thin materials are not sheet material. For example, items can be molded to be thin. Item can be cut to be thin. Items can be beat to be thin. Without a specific disclosure, no one can really know how something became thin.

If the Board still maintains such a rejection, Tetenes respectfully requests that the Board direct the Examiner to provide a reference that shows this feature of claim 1⁹ or an affidavit detailing the Examiner’s knowledge as one of ordinary skill in the art to which the present invention pertains affirming that “It is inherent that the cylindrical containers are made of sheet material since the thickness of the walls of the container are so thin.”[Emphasis added].¹⁰

Again, it is apparent that the Examiner has taken facts beyond the record by stating at page 3, ¶ 2, lines 8-9 of the Final rejection a statement that is again contrary to the PTO

⁹ *In re Newell*, 13 USPQ.2d 1248 (CAFC 1989) (“Without such concrete evidence neither the applicant nor the Examiner can make a proper determination of the state of the art or the issues relevant to either anticipation or obviousness, nor can the applicant fairly judge whether the prior art discloses the claimed invention, is capable of being combined with the other references, or is in an analogous field of art.”).

¹⁰ 37 CFR § 1.107(b) (“When a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.”).

policy in *MPEP* § 706.02(a) directing Examiners never to overlook the importance of allowing claims that properly define patentable subject matter:

“It is inherent that the side walls are stitched together since that is how components were attached to the container * * *.”[Emphasis added]

Again, it is improper — if not inequitable — for the Examiner to rely on this fact for evidence of the rejection as was decided in *In re Howard* and *In re Ahlert* discussed above.

Furthermore, again the Examiner is not obligated to find such a rejection simply to be able to reject every claim in the application.

If the Board still maintains such a rejection, Tetenes respectfully requests that the Board again direct the Examiner to provide a reference that shows this feature of claim 1 as required by *MPEP* § 706.02(a), *In re Ahlert*, *In re Howard*, and *In re Newell* discussed above or an affidavit detailing the Examiner’s knowledge as one of ordinary skill in the art to which the present invention pertains affirming that “It is inherent that the side walls are stitched together since that is how components were attached to the container * * *.” [Emphasis added] as required by *37 CFR* § 1.107(b) discussed above.

In view of the arguments presented throughout the instant Brief on Appeal, Tetenes respectfully submits that the Examiner’s grounds for the rejection of claims 1 and 4 as being unpatentable under *35 U.S.C. § 103(a)* over Tetenes in view of Nelson *et al.* Levey in view of Campbell in view of Juergens in view of Roberts and Willinger are no longer applicable and Tetenes therefore respectfully requests that the Board reverse this rejection.

Tetenes has shown that there is no motivation to modifying the device for holding a bucket of chum as taught by Tetenes can be modified to have added thereto the drawstring to close the upper edge of the container as taught by Nelson *et al.*, the device for holding a bucket of chum as taught by Tetenes and modified by Nelson *et al.* can be further modified to have added thereto the sheet material having a plurality of orifices for permitting chum matter to pas through as taught by Levey, the device for holding a bucket of chum as taught by Tetenes and modified by Nelson *et al.* can be further modified to have added thereto the sheet material having a second plurality of orifices to thread the drawstring as taught by Campbell, the device for holding a bucket of chum as taught by Tetenes and modified by Nelson *et al.* can be further modified to have added thereto the sheet material having a longitudinal area for fabricating the toroidal sleeve as taught by Juergens, the device for holding a bucket of chum as taught by Tetenes and modified by Nelson *et al.*, Levey, Campbell, and Juergens can be further modified to have added thereto the toroidal sleeve being fabricated by stitching a first and second longitudinal edges of the longitudinal area together as taught by Roberts, the device for holding a bucket of chum as taught by Tetenes and modified by Nelson *et al.*, Levey, Campbell, Juergens, and Roberts can be further modified to have added thereto the sheet material being made of a flexible material as taught by Nelson et al. and Roberts, the device for holding a bucket of chum as taught by Tetenes and modified by Nelson *et al.* can be further modified to have added thereto the orifice in the bottom of the container permitting chum matter to pass through as taught by Willinger, the device for holding a bucket of chum as taught by Tetenes and modified by Nelson *et al.* and

Willinger can be further modified to have added thereto the circular bottom component permanently attached to the container as taught by Roberts, the device for holding a bucket of chum as taught by Tetenes and modified by Nelson *et al.*, Willinger, and Roberts can be further modified to have added thereto the welting sewn between the bottom portion and the lower edge of the cylindrical container as taught by Campbell, and the device for holding a bucket of chum as taught by Tetenes and modified by Nelson *et al.*, Willinger, Roberts, and Campbell can be further modified to have added thereto the sheet material made from plastic as taught by Nelson *et al.* and Roberts.

In light of the presented appeal and the accompanied arguments a reversal of the examiner's position rejecting claims 1 and 4 is respectfully requested.

37 CFR § 43.37(c)(1)(viii) - Claims appendix.

- 1 1. A device for holding a bucket of chum submerged in water, comprising:
 - 2 a) a cylindrical containing component having a lower edge and an upper edge;
 - 3 b) a circular bottom component being permanently attached to said lower edge
 - 4 of said cylindrical containing component;
 - 5 c) a toroidal sleeve being fixedly located near said upper edge of said cylindrical
 - 6 containing component;
 - 7 d) a drawstring cooperating with said upper edge of said cylindrical containing
 - 8 component and pulling said upper edge closed for captivating the bucket of
 - 9 chum held within said device; and
 - 10 e) a welting having edges;
- 11 wherein said cylindrical containing component is fabricated out of sheet material;
- 12 wherein said sheet material is rectangular and has an upper edge, a lower edge, and
- 13 two side edges;
- 14 wherein said upper edge of said sheet material is said upper edge of said cylindrical
- 15 containing component;
- 16 wherein said lower edge of said sheet material is said lower edge of said cylindrical
- 17 containing component;
- 18 wherein said sheet material has two side edges that are stitched together;
- 19 wherein said sheet material has a first plurality of orifices therein for permitting chum
- 20 matter to passthrough;

21 wherein said sheet material has a second plurality of orifices inline therein for
22 cooperating with said drawstring that is threaded therethrough;
23 wherein said sheet material has a longitudinal area extending between said first
24 plurality of orifices and said second plurality of orifices, fabricates said toroidal sleeve,
25 and has a first longitudinal edge and a second longitudinal edge;
26 wherein said toroidal sleeve is fabricated by attaching said first longitudinal edge of
27 said longitudinal area and said second longitudinal edge of said longitudinal area
28 together;
29 wherein said sheet material is flexible plastic material;
30 wherein said circular bottom component is fabricated out of sheet material having at
31 least one orifice therein for permitting the chum matter to pass through;
32 wherein said circular bottom component has a circumference and is permanently
33 attached by stitching near said circumference thereof and near said lower edge of said
34 cylindrical containing component;
35 wherein said edges of said welting are sewn in between said circumference of said
36 circular bottom component and said lower edge of said cylindrical containing
37 component; and
38 wherein said sheet material is flexible plastic material.

1 4. The device as defined in claim 1, wherein said toroidal sleeve has foam floatation
2 element housed therein.

3 **37 CFR § 43.37(c)(1)(ix) - Evidence appendix.**

4 None.

5 **37 CFR § 43.37(c)(1)(x) - Related proceedings appendix.**

6 None.